

establish its status as a primary licensee in a particular spectrum and establish procedures to ensure that the Commission provides licensees with this information.

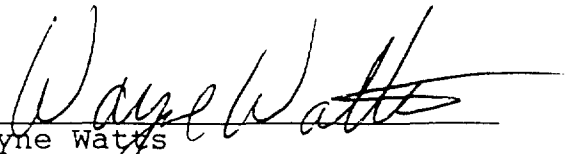
The establishment of such rules will not only add clarity for the incumbent licensees, but will assist the Commission in avoiding enumerable disputes regarding an incumbent licensee's right to relocation benefits under the Commission's rules. This could become particularly important to the Commission should it assume the role of arbitrator, as it will have the effect of limiting the number of disputes which might arise and providing clear guidance to all parties as to the rules to be applied in the event of any disputes.

V. Conclusion

As noted in SBMS' Comments in response to the PBMS Petition, SBMS supports the establishment of a rulemaking to consider the numerous important issues of microwave relocation. In addition to the issues raised in the PBMS Petition and those issues identified in SBMS' Comments, the Commission should seek comment upon and establish rules to address the concerns of both the incumbent licensees and PCS operators as set forth in these Informal Supplemental Comments.

Respectfully submitted,

SOUTHWESTERN BELL MOBILE
SYSTEMS, INC.



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P:\FCC8643INFORMAL

Certificate of Service

I, Kristy Horton, do hereby certify that on this 26th day of June, 1995, a copy of Informal Supplemental Comments of Southwestern Bell Mobile Systems, Inc. in Support of the Petition for Rulemaking of Pacific Bell Mobile Services, FCC Docket No. RM-8643 was mailed, via Airborne overnight delivery to the following:

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Kristy Horton

(e) Licenses for Local Television Transmission Service stations that are assigned frequencies allocated to the broadcast services shall terminate simultaneously with the expiration of the authorization for the broadcast station to which such service is rendered.

§ 101.69 Transition of the 2.11-2.13, and 2.16-2.18 GHz bands from Common Carrier Fixed Microwave Services and the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz bands from Private Operational Fixed Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Common Carrier and Private Operational Fixed Microwave Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Common Carrier and Private Operational Fixed Microwave licensees, with the exception of public safety facilities defined in paragraph (f) of this section, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology services (two-year voluntary negotiation period), and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period) or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period). When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply. Public safety facilities defined in paragraph (f) of this section will maintain primary status in these bands until four years after the Commission commences acceptance of applications for an emerging technology service (four-year voluntary negotiation period), and until one year after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period).

(c) The Commission will amend the operation license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium.

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities subject to the four-year voluntary and one-year mandatory negotiation periods, are those that the majority of communications carried are used for police, fire, or emergency medical services operations involving safety of life and property. The facilities within this exception are those facilities currently licensed on a primary basis pursuant to the eligibility requirements of § 90.19, Police Radio Service; § 90.21, Fire Radio Service; § 90.27 Emergency Medical Radio Service; and Subpart C of Part 90, Special Emergency Radio Services. Licensees of other Part 101 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subparts B and C, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

23115

News media information: 202/632-6050. Recorded listing of releases and texts: 202/632-6002.

May 16, 1992

TWO GIGAHERTZ FIXED MICROWAVE LICENSING POLICY

On January 16, 1992, the Commission adopted a Notice of Proposed Rule Making (Notice) in ET Docket 92-9 that proposes to allocate spectrum for emerging telecommunications technologies. The frequencies at issue currently are used for fixed microwave operation and include 1850-1990, 2110-2130/2160-2180, and 2130-2150/2180-2200 MHz. In the Notice the Commission stated that its goal is to ensure the availability of the existing vacant 2 GHz spectrum in these bands for the development of new services and to discourage possible speculative fixed service applications for this spectrum. Therefore, applications for new fixed microwave facilities submitted after the adoption date of the Notice will be granted on a secondary basis only, conditioned upon the outcome of the proceeding.

In the initial implementation of this policy, the conditional secondary status was applied to all major modifications to existing 2 GHz construction authorizations or licenses, in accordance with 47 C.F.R. §§ 1.962 and 21.27. We recognize, however, that most major modifications will not significantly affect the use and availability of existing 2 GHz spectrum. Therefore, the conditional secondary status will not be applied to modifications of facilities licensed prior to January 16, 1992, including:

- o Any change in antenna azimuth;
- o Any change in antenna beam width;
- o Any change in channel loading;
- o Any change in emission;
- o Any change in station location;
- o Any change in ownership or control;
- o Any increase in antenna height;
- o Any increase in authorized power;
- o Any reduction in authorized frequencies; and
- o Any addition of frequencies not in the 2 GHz band.

We also believe the conditional secondary status should not be applied in certain situations where additional links may be required to complete a communications network, or where new facilities and/or frequencies are operationally connected to a

system, licensed prior to January 16, 1992. In these instances, we will not apply the secondary conditional status when the applicant makes a valid showing of its need for the facilities.

Construction authorizations or licenses granted as a result of an application filed subsequent to the Notice and bearing the secondary-use special condition will, as appropriate, be modified to conform with this current policy and will be reissued on our own motion. In cases where the secondary condition remains applicable, applicants may, if they believe circumstances warrant, file the above described showing and request the condition be removed.

For further information concerning this Public Notice contact Mike Hayden, Chief, Microwave Branch, Private Radio Bureau at (717) 337-1421; Robert James, Chief, Domestic Radio Branch, Common Carrier Bureau at (202) 634-1706; or Fred Thomas at (202) 653-8117, Office of Engineering and Technology.

EXHIBIT 2

Affidavit of Keith Rainer

§
§
§


My name is Keith Rainer. I am over 21 years of age and am fully competent to declare, under oath, the following:

I am employed by Southwestern Bell Mobile Systems, Inc. ("SBMS"), as Director - Wireless Systems.

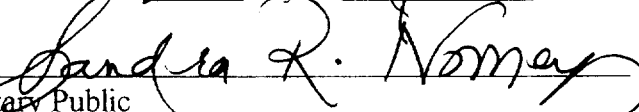
As part of my job responsibilities, I am familiar with the technology associated with cellular and other wireless and wireline networks, including new and emerging technologies. I am also responsible for coordinating the relocation of microwave facilities in our PCS market areas. In regards to such coordination I would like to note the following:

1. In an effort to relocate incumbent private fixed microwave systems, SBMS has begun contacting the owners of these systems which operate in-band with the PCS spectrum which SBMS has purchased in the Tulsa, Little Rock, and Memphis MTAs.
2. In our initial meeting with a major utility to discuss relocation and related PCS business issues, the representatives of the utility stated that with respect to their PCS in-band microwave properties that they did not wish to relocate just the links with which we might interfere, but rather wanted their entire microwave network relocated. Further, it was their desire that the system's technology be upgraded from analog to digital.

Further Affiant sayeth not.


Keith Rainer

Sworn and subscribed to
before me this 29th day of June 1995.


Notary Public

My Commission expires on: Feb. 19, 2002

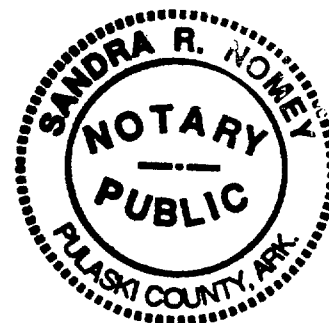


EXHIBIT 3

TELECOMMUNICATIONS

Attachment 2

Volume IV, Spring/Summer 1995

KELLER AND HECKMAN

LAW OFFICES

Opportunity Knocks for 2 GHz Incumbents

FCC Announces Commencement of Voluntary Negotiations

by Raymond A. Kowalski

Now that the auctions for Block A and B PCS licenses are closed, the next step toward the creation of PCS systems in the United States is the relocation of point-to-point microwave systems that presently occupy the 2 GHz band earmarked for PCS systems. PCS licensees ultimately can force the microwave incumbents to leave the band by providing them with "comparable facilities." However, before the two sides resort to such involuntary relocations, the Federal Communications Commission (FCC) is hoping that they will be able to come to mutually agreeable terms for early and voluntary microwave system relocation.

On April 18, 1995, the FCC officially announced that the period of voluntary negotiations between microwave incumbents and the winners of the A and B block PCS auctions had begun as of April 5, 1995. Under the FCC's rules, this voluntary negotiation period will run for two years, except for incumbent public safety microwave systems, which will have three years for voluntary negotiations.

Microwave incumbents now are beginning to receive overtures from agents for the PCS auction winners. As the negotiations commence, it is vital for microwave incumbents to understand what is being negotiated during this period. Although the PCS auction winners might indicate otherwise, these negotiations are not about "comparable facilities." Rather, they are about the early and voluntary

departure of the microwave incumbents from the 2 GHz band.

The issue of "comparable facilities" has almost nothing to do with this phase of the negotiations. The requirement for the PCS licensee to provide the microwave incumbent with "comparable facilities" comes into play only when an incumbent microwave licensee is being "involuntarily" relocated under the FCC's "mandatory" relocation rules. Involuntary relocation, however, may not be reached for three to five years.

Keller and Heckman is counselling its clients that this initial voluntary negotia-

tion period is not about engineering or "comparable facilities." It is about the marketplace.

The FCC's mandatory relocation rules preserve the microwave incumbents' rights, but there is no magic formula to accomplish that goal. During the voluntary relocation period, microwave incumbents are free to negotiate whatever terms and conditions they believe are appropriate under the circumstances.

The questions and answers on page 3 may help incumbent microwave licensees understand the nature of the voluntary negotiation period. ♦

Keller and Heckman Takes on PCIA

Ten days after the FCC announced that the voluntary negotiation period had begun, PCIA, the trade association for the PCS industry, wrote a letter to FCC Chairman Hundt, seeking to change the ground rules.

PCIA decried the possibility that incumbent microwave licensees might try to extract "excessive payments" from PCS auction winners during the voluntary negotiations. Therefore, it asked the Chairman to eliminate the voluntary negotiation period, cap the allowable compensation and do away with the microwave licensee's right to restoration of its 2 GHz system if its replacement system turns out to be inadequate.

Learning of this letter, Keller and Heckman wrote to Chairman Hundt, defending the incumbents' rights to negotiate the best terms possible for their early and voluntary departure from the 2 GHz band.

This attempt to intimidate microwave incumbents and to contaminate the negotiation process is ample evidence of the tactics that will be employed against unwary microwave licensees.

More 2 GHz Relocations

FCC Proposes Reallocation of Spectrum for Mobile Satellite Service

by John Reardon

Despite previous indications that use of the bands in the 2 GHz range would not be changed for the foreseeable future, the Federal Communications Commission (FCC) has adopted a Notice of Proposed Rule Making in ET Docket 95-18 (Notice) that looks toward reallocating the bands 1990-2025 MHz and 2165-2200 MHz for use by the Mobile Satellite Services (MSS).

Incumbent licensees currently operate a significant number of stations in these bands. Like the incumbent licensees who must move in order to make room for Personal Communications Services (PCS), these licensees also will be required to relocate their facilities if the FCC's proposal becomes final.

The 1990-2025 MHz band is part of a band that is currently allocated for the Broadcast Auxiliary Services (BAS). The FCC proposes to relocate BAS incumbents to the band 2110-2145 MHz and to force MSS licensees to pay the costs of this relocation.

The 2110-2145 MHz band, however, is currently used by common carrier fixed microwave services and private operational-fixed microwave services. In its Notice, the FCC stated that it believes that sharing between BAS and these fixed microwave services is not feasible. Therefore, before the BAS licensees can be moved into this band, the incumbent fixed microwave service licensees must be moved out.

Like the 2110-2145 MHz band, the 2165-2200 MHz band also is currently used by common carrier and private operational-fixed microwave services. They also must be moved before the band can be used by MSS providers.

The MSS providers would be required to pay the incumbents' relocation expenses, build new facilities for the incumbents, and demonstrate that these new facilities are "comparable" to the incumbents' former facilities. The new facilities would be built and tested by the MSS provider before relocation would occur. Should the new facilities prove within one year not to be equivalent in every respect to the former facilities, the MSS provider would have to pay to return the incumbent to its former facilities until full equivalency is attained.

Note that MSS providers would be forced to finance the relocations of both incumbent BAS licensees and fixed microwave licensees. The Notice is not clear on the time frame, but sources at the FCC indicate that there would be a three

year negotiation period similar to that provided licensees in the band 1850-1990 MHz.

In a footnote, the FCC proposed to eliminate primary license status after January 1, 1997, for licensees in the Private Operational-Fixed Microwave Service that are notified of a request for mandatory relocation. This is a significant departure from the policy that now governs the relocation of microwave incumbents to make room for PCS. Those licensees will not lose their primary status until their comparable facilities have been built and tested.

The FCC proposes to award the new MSS licenses through competitive auctions, utilizing simultaneous multiple round bidding. ♦

For further information contact the editor:

Raymond A. Kowalski, Law Offices of Keller and Heckman, Washington Center, Suite 500 West, 1001 G Street, N.W., Washington, D.C. 20001, Tel. (202) 434-4230, Fax (202) 434-4646. (This newsletter may be copied or quoted, so long as proper attribution is given. Articles are on topics of general interest and do not constitute legal advice for particularized facts.)

KELLER AND HECKMAN PRACTICE AREAS:

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TRANSPORTATION ♦ GENERAL CORPORATE AND BUSINESS
INTERNATIONAL TRADE

Understanding Voluntary Negotiations

Q. If "comparable facilities" are not being negotiated during this voluntary negotiation period, what is?

A. Among other things, the price for the incumbent's early and voluntary departure from the 2 GHz band.

Q. Do I have to negotiate with the agent of the PCS auction winner if I am contacted?

A. No. Negotiations are not required during the voluntary negotiation period. A mandatory negotiation period will follow the voluntary negotiation period.

Q. If I choose to negotiate, do I still have the right to comparable facilities?

A. Comparable facilities is your worst-case scenario. Even if you are eventually relocated involuntarily, you are always entitled to comparable facilities. If you relocate voluntarily, you are entitled to anything that is mutually agreeable.

Q. Does that include upgraded, digital facilities?

A. It can include upgraded, digital facilities, dedicated wire-line facilities, fiber-optic facilities, or no facilities, that is, a cash payment — whatever you both agree to.

Q. Why would a PCS licensee agree to give us more than "comparable facilities" when they don't have to?

A. Some PCS licensees, especially those in major markets, may be willing to give you an incentive in return for your agreement to vacate the 2 GHz band early.

Q. Can I demand to be relocated early?

A. No. The PCS auction winner is in control of the timing of the negotiations. In fact, PCS auction winners may never initiate negotiations if they believe that their systems can be engineered in such a way as to not cause interference to your microwave system. However, they would be required to send you "prior coordination notices" if they are going to try to engineer around your microwave system.

Q. If we don't agree to relocate early, don't we risk the unavailability of microwave channels in the 6 GHz band to accommodate our new system?

A. Yes, but it is not your problem; it is the PCS licensee's problem. The PCS licensee will always have the burden to provide you with comparable facilities: if you are required to relocate. If they cannot do so, you do not have to move. You cannot be accused of failing to bargain in good faith if you do not negotiate during the voluntary period.

Q. If we strike a deal for early and voluntary departure from the 2 GHz band, do we still have the right to be relocated back to the 2 GHz band within a year if our new system is not satisfactory?

A. Not necessarily. The right to be relocated back to the 2 GHz band applies only to an involuntary relocation. In the voluntary negotiations, you do not have the right to be relocated back to the 2 GHz band unless you negotiate it.

Q. So giving up the relocation right is another reason why the PCS licensee might be willing to give us more than "comparable facilities?"

A. Precisely.

"...this initial voluntary negotiation period is not about engineering or 'comparable facilities.' It is about the marketplace."

- Lead Story

Congress Enacts Last Minute Tax Measures

2 GHz Microwave Incumbents Could Benefit From Tax Break

by Tamara Y. Davis

As part of a package of last minute tax measures, Congress has authorized the Federal Communications Commission (FCC) to issue Tax Certificates to 2 GHz microwave incumbent licensees who enter into voluntary negotiations for the relocation of their microwave facilities. The authority for issuance of Tax Certificates to 2 GHz microwave incumbents is now contained in Section 1033 of the Tax Code.

This action permits tax-free treatment for transactions between PCS licensees and incumbent microwave operators who voluntarily move from the 2 GHz band. Since relocation to different frequency bands (or other media) is necessary to clear the band for PCS technology,

Congress classified such transactions as "involuntary conversions" within the meaning of Section 1033 of the Tax Code.

Section 1033 permits a taxpayer to defer any gain on property sold or exchanged as a result of an involuntary conversion. To defer the gain, the transaction between a microwave incumbent and an A or B Block PCS auction winner must occur before March 13, 1998. The taxpayer must: (1) reinvest the proceeds of the transaction in property which is similar to or related in service or use to the property which was converted; (2) obtain a certificate from the FCC, clearly identifying the property, and showing that the transaction was necessary or appropriate to

effectuate the FCC's microwave relocation policy; and (3) file a statement electing this tax treatment in the year the sale or exchange occurred. The election must be filed at the time of the sale and cannot be filed as part of an amended return.

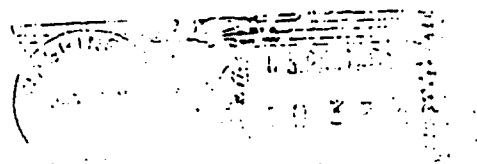
Depending on the age of a company's 2 GHz microwave facilities and its treatment of depreciable property, its 2 GHz facilities may already be fully depreciated. Without this relief, any value received for the system would be treated and taxed as a capital gain. ♦

TELECOMMUNICATIONS

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